



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/014,249      | 11/09/2001  | Guy G. Riddle        | 18602-06524         | 2754             |

758 7590 01/21/2003

FENWICK & WEST LLP  
SILICON VALLEY CENTER  
801 CALIFORNIA STREET  
MOUNTAIN VIEW, CA 94041

EXAMINER

MEKY, MOUSTAFA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2157

DATE MAILED: 01/21/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/014,249

Applicant(s)

RIDDLE, GUY G.

Examiner

Moustafa M Meky

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2001 <sup>supp.</sup>
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7</u> | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 2153

1. The pre-amendment filed 11/09/2001 has been entered and considered by the examiner.
2. Claims 1-33 are presented for examination.
3. The pre-amendment does not meet 1.173© which requires a detailed explanation of the support in the disclosure for the new claims.
4. The declaration filed with this application is defective because it does not adequately identify at least one error as per 1.175(a)(1).
  - 4.1. Claims 1-33 are rejected as being based upon a defective declaration under 251 as set forth above.
5. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
  - 5.1. There is no offer to surrender the patent. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue can be allowed.
6. Claims 1-33 would be allowed in the case the issues of informalities are resolved.
  - 6.1. The prior art of record does not teach:
    - \* dynamically measuring use of program elements at a node and assigning bandwidth among program elements, such that the total of assigned bandwidth is not greater than the allocated bandwidth (claims 1 & 3); and

Art Unit: 2153

\* receiving an allocated nodal maximum bandwidth, determining current values of a set of variables related to bandwidth usage by one or more processes, and utilizing the current values to adjust the allocated nodal maximum bandwidths for one or more nodes (claims 5 & 28).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Moustafa M. Meky whose telephone number is (703) 305-9697.

The examiner can normally be reached on week days from 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on (703) 305-4792. The fax phone number for this Group is (703) 308-9051.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-9051, (for formal communications intended for entry)

**Or:**

(703) 305-305-7201 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

M.M.M January 16, 2003

  
MOUSTAF A M. MEKY  
PRIMARY EXAMINER